Rochester Tel Center
180 South Clinton Avenue
Rochester, New York 14646-0700

716-777-1028

Michael J. Shortley III
Senior Corporate Attorney

ORIGINAL

DOCKET FILE COPY ORIGINAL

RECEIVED

NOV 18 1993

FCC - MAIL ROOM

RochesterTel

November 5, 1993

BY OVERNIGHT MAIL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: GN Docket No. 93-252

Dear Mr. Caton:

Enclosed for filing please find an original plus nine (9) copies of the Comments of Rochester Telephone Corporation in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: Chief, Mobile Services Division

Chief, Land Mobile and Microwave Division, Private Radio Bureau

International Transcription Service

No. of Copies rec'd 0+9
List A B C D E

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	DOCKET FILE COPY ORIGINAL
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
Regulatory Treatment of Mobile Services	)	

COMMENTS OF ROCHESTER TELEPHONE CORPORATION

Michael J. Shortley, III

Attorney for Rochester
Telephone Corporation

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

November 5, 1993

(2741K)

Table of Contents

Summary

Rochester*/ submits these comments in response to the Commission's Notice initiating this proceeding. The Commission is seeking comment on three broad issues relating to the regulatory treatment of mobile services as provided for in the Budget Act: (1) the regulatory classification of existing mobile services; (2) the regulatory treatment of commercial mobile services; and (3) standards for permitting state re-regulation of commercial mobile services. The Commission should adopt regulations that foster two related goals: (a) substitutable services should receive the same regulatory classification; and (b) the degree of regulation adopted by the Commission should recognize the competitive nature of mobile services.

To facilitate these goals, the Commission should adopt three policies. First, consistent with the definitional provisions of the Act, the Commission should classify as commercial those services that today are classified as private, but which are substitutable for existing common carrier

---

*/ The abbreviations used in this summary are defined in the text.

services. Certain SMR services and shared and internal private radio systems that resell excess capacity plainly fall within the definition of commercial services and should be classified accordingly.

Second, for those services that the Commission classifies as commercial, the Commission should adopt its proposed policy of regulatory forbearance. These services are highly competitive today. Therefore, traditional entry and rate regulation are unnecessary. The Commission may easily make the findings required by the Act to apply the forbearance doctrine to commercial mobile services.

Third, the Commission should create a strong presumption against state attempts re-regulate such services. Regulation of commercial mobile services is unnecessary and, absent a compelling showing of a clear market failure, the Commission should make clear that it will not grant state petitions to exercise entry and rate regulation over commercial mobile services.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
Regulatory Treatment of Mobile Services	)	

COMMENTS OF ROCHESTER
TELEPHONE CORPORATION

Introduction

Rochester Telephone Corporation ("Rochester") submits these comments in response to the Commission's Notice[1/] initiating this proceeding. The Commission is seeking comment on three broad issues relating to the regulatory treatment of mobile services as provided for in the Omnibus Budget Reconciliation Act of 1993 ("Act"): (1) the regulatory classification of existing mobile services; (2) the regulatory treatment of commercial mobile services; and (3) standards for permitting state re-regulation of commercial mobile services. The Commission should adopt regulations that foster two related goals: (a) substitutable services should receive the same regulatory classification; and (b) the degree of regulation adopted by the Commission should recognize the competitive nature of mobile services.

1/ Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, GN Dkt. 93-252, Notice of Proposed Rulemaking, FCC 93-454 (Oct. 8, 1993) ("Notice").

To facilitate these goals, the Commission should adopt three policies. First, consistent with the definitional provisions of the Act,[2/] the Commission should classify as commercial those services that today are classified as private, but which are substitutable for existing common carrier services. Certain specialized mobile radio ("SMR") services and shared and internal private radio systems that resell excess capacity plainly fall within the definition of commercial services and should be classified accordingly.

Second, for those services that the Commission classifies as commercial, the Commission should adopt its proposed policy of regulatory forbearance.[3/] These services are highly competitive today. Therefore, traditional entry and rate regulation are unnecessary. The Commission may easily make the findings required by the Act to apply the forbearance doctrine to commercial mobile services.

Third, the Commission should create a strong presumption against state attempts re-regulate such services. Regulation of commercial mobile services is unnecessary and, absent a compelling showing of a clear market failure, the Commission should make clear that it will not grant state petitions to

---

2/ 47 U.S.C. § 332(d)(1).

3/ Notice, ¶ 62.

exercise entry and rate regulation over commercial mobile services.

Argument

I. THE COMMISSION SHOULD ADOPT POLICIES THAT PROVIDE FOR REGULATORY PARITY AMONG SUBSTITUTABLE MOBILE SERVICES.

The Act provides that commercial mobile services shall be treated as common carrier services, subject to Title II of the Communications Act, except as the Commission may otherwise prescribe.[4/] The Act further defines commercial services as those mobile services that are provided for profit and are interconnected to the public switched network.[5/]

The Commission should address the definitional questions raised in the Notice such that services which today are classified as private -- but which are substitutable for common carrier services -- receive the same regulatory classification.

The for-profit prong of the test for classification as a commercial service is straight forward. Thus, a mobile radio service operated solely for internal use probably cannot be defined as a for-profit service. However, shared use systems -- particularly those that employ a for-profit system manager -- and internal systems the owners of which resell "excess

---

4/ 47 U.S.C. § 332(c)(1)(A).

5/ 47 U.S.C. § 332(d)(1).

capacity" are for-profit enterprises that the Commission should recognize as such.[6/] These services and systems are directly substitutable for existing common carrier mobile services -- such as cellular and paging. For example, certain SMR services are currently offered to end user customers in competition with cellular. "Excess capacity" on internal systems may also be marketed in the same manner. There is no reason to provide the licensees of such systems with regulatory advantages over common carrier licensees.

The Commission should also adopt a pragmatic definition of interconnected service. To the extent that an end user of the mobile service in question can access the public switched network, the Commission should classify that service as an interconnected service. The particular technology used to make the interconnection -- e.g., store-and-forward, operator connection -- should make no difference.[7/] End users have access to the public switched network and that fact should end the inquiry.

Similarly, the Commission should decline to adopt capacity-based or similar exceptions to the definition of interconnected service on the grounds that such services are

---

6/ Notice, ¶¶ 11-13.

7/ Id., ¶ 21.

not "available to the public or to such classes of eligible users as to be effectively available to substantial portions of the public."[8/] Service providers have the option of constructing systems -- consistent with the Commission's various coverage rules -- to suit their business plans. Capacity and territorial limitations should have little bearing on the issue of whether the service is publicly available.[9/] Moreover, that providers may target specific businesses or industries for currently-classified private land mobile services should be irrelevant to the service's regulatory classification. A company's specific marketing philosophy should not necessarily preclude a finding that a particular service is a common carrier service.

The definitional approach suggested above should apply equally to personal communications services ("PCS"). If a particular PCS application provides a for-profit interconnected service, generally available to the public, the Commission should classify that service as commercial. However, as the Commission recognizes, there likely will be PCS applications

---

8/ 47 U.S.C. § 332(d)(1).

9/ In addition, the for-profit prong of the test should resolve most questions as to whether a service is available to a substantial portion of the public. A low capacity system -- e.g., a traditional dispatch service -- likely would not be offered for profit and, therefore, could not be classified as a commercial mobile service.

that are not common carrier in nature.[10/] For example, a wireless private branch exchange ("PBX") may serve a single building. Such an application would plainly not be available to the public. The Commission should treat a wireless PBX as another form of customer premises equipment. Classification as a private mobile service would be appropriate in these circumstances.[11/]

II. THE COMMISSION SHOULD ADOPT A REGULATORY FORBEARANCE POLICY FOR COMMERCIAL MOBILE SERVICES.

The Act permits the Commission to decline to apply particular sections of Title II of the Communications Act -- except sections 201, 202 and 208 -- upon a determination that the application of Title II is not necessary to ensure just and reasonable rates, is not necessary for the protection of consumers and is consistent with the public interest.[12/] The

---

10/ Notice, ¶ 45.

11/ Rochester agrees with the Commission's proposal to permit PCS licensees to self-select their regulatory classification (id., ¶¶ 46-48), subject to two important provisos. First, the self-selection cannot be at variance with the statutory definition. Second, PCS providers electing classification as offering a private service must certify that the proposed system will conform to the Act and applicable Commission regulations.

12/ 47 U.S.C. § 332(c)(1)(A).

Commission may easily make these determinations with respect to commercial mobile services.

The Commission has correctly concluded that:

> the level of competition in the commercial mobile services marketplace is sufficient to permit us to forbear from tariff regulation of the rates for commercial mobile services provided to end users.[13/]

Existing common carrier mobile services, such as cellular and paging, are already highly competitive, not only among themselves but also with other services, such as SMR.[14/] For these services, the Commission may safely rely upon market forces to ensure just and reasonable rates and the protection of consumers.

The Commission, however, enters a disquieting note:

> Some commercial mobile service providers will be affiliated with dominant common carriers. In other circumstances, when we have refrained from regulating certain services provided by affiliates of dominant common carriers, we have imposed safeguard requirements on the dominant common carrier to ensure that it does not act anticompetitively. We seek comment on whether we should impose any similar requirements on dominant common carriers with commercial mobile service affiliates.[15/]

13/ Id., ¶ 62.

14/ See supra at 3-4.

15/ Id., ¶ 64.

There is no basis for the Commission to apply stricter rules to one set of commercial mobile service providers simply because they are affiliated with exchange carriers. Exchange carriers have no ability to disadvantage their rivals by virtue of ownership of the local exchange. The local exchange business is already subject to substantial competition.[16/] Moreover, unaffiliated mobile service providers already possess a right to interconnection to the public switched network[17/] and the Act confirms that right.[18/] The Commission has also decided to permit exchange carriers -- including those affiliated with cellular carriers -- to participate in the proposed auctions for PCS spectrum.[19/] In these circumstances, the possibility of anticompetitive conduct about which the Commission speculates is remote, at best. There is

---

16/ E.g., Expanded Interconnection with Local Telephone Company Facilities, CC Dkt. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369, 7373, ¶ 4 & n.5 (1992).

17/ Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Report No. CL-379, Declaratory Ruling, 63 RR 2d (P&F) 7, 22, ¶¶ 21-22 (1987).

18/ 47 U.S.C. § 332(c)(1)(B).

For this reason, Rochester agrees with the Commission that the right to interconnection is exclusively a federal matter and that the Commission should preempt state regulation in this area. Notice, ¶ 71. The Commission should also provide PCS providers the same interconnection rights. Id., ¶ 73.

19/ Public Notice, New Personal Communications Services Established at 2 (Sept. 23, 1993).

no reason for the Commission to adopt additional "safeguards" that apply to exchange carriers or their commercial mobile services affiliates.

III. THE COMMISSION SHOULD CREATE A STRONG PRESUMPTION AGAINST STATE RE-REGULATION OF COMMERCIAL MOBILE SERVICES.

The Act preempts state rate and entry regulation of commercial mobile services. In this respect, the Act represents sound public policy. However, it permits the states to re-regulate these aspects of such services if: (a) necessary to protect subscribers; or (b) such services are a replacement for a substantial portion of landline telephone service.[20/]

The Commission should create a strong presumption against the grant of petitions for state rate or entry regulation of commercial mobile services. As described above,[21/] rate and entry regulation are unnecessary. The Commission should not permit states to thwart the federal policy -- embodied in the Act -- of permitting competition, rather than regulation, to determine the terms under which commercial mobile services are provided to the public. Thus, absent strong evidence demonstrating a clear market failure,

---

20/ 47 U.S.C. §§ 332(c)(3)(A), (B).

21/ See supra at 3-4, 7.

the Commission should decline to permit the states to reassert rate and entry regulation over commercial mobile services.

Conclusion

For the foregoing reasons, the Commission should adopt regulatory policies for mobile services consistent with the recommendations contained herein.

Respectfully submitted,

Michael J. Shortley, III

Attorney for Rochester Telephone Corporation

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

November 5, 1993

(2741K)